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In the Supreme Court of the United States

OCTOBER TERM, 1989

INGERSOLL-RAND COMPANY, PETITIONER

v.

PERRY MCCLENDON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974 (ERISA) preempts a state common law claim that an employer unlawfully discharged an employee in order to interfere with his attainment of benefits under a plan covered by ERISA.

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INTEREST OF THE UNITED STATES

Respondent brought a state common law action claiming, *inter alia*, that petitioner, his former employer, discharged him in order to prevent his pension benefits from vesting. The question presented is whether that claim is preempted by the Employee Retirement Income Security Act of 1974 (ERISA). This case therefore involves the application of three provisions of that statute: (1) Section 510, 29 U.S.C. 1140, which prohibits employers from interfering with the attainment of benefits promised under plans governed by ERISA; (2) Section 502, 29 U.S.C. 1132, which confers exclusive jurisdiction on

federal district courts to award appropriate relief to prevent and redress violations of Section 510; and (3) Section 514(a), 29 U.S.C. 1144(a), which preempts state laws relating to employee benefit plans.

The Texas Supreme Court held that the public policy embodied in Section 510 may form the basis of a state wrongful discharge action. Pet. App. 5a. The Secretary of Labor enforces the reporting, disclosure, and fiduciary obligations that ERISA imposes on private employee benefit plans. More specifically, Section 502(h), 29 U.S.C. 1132(h), provides that parties bringing suit to enforce their rights under Section 510 must notify the Secretary of the action, and further provides that she has the right to intervene in any such action. The Secretary therefore has a strong interest in the proper interpretation of Section 510 and of ERISA's preemption and enforcement provisions.

STATUTORY PROVISIONS INVOLVED

Section 502 of ERISA, 29 U.S.C. 1132, provides in pertinent part:

(a) **Persons empowered to bring a civil action**

A civil action may be brought—

* * * *

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

* * * *

(e) **Jurisdiction**

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

* * * *

Section 510 of ERISA, 29 U.S.C. 1140, provides:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C.A. 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

Section 514 of ERISA, 29 U.S.C. 1144, provides in pertinent part:

(a) **Supersedure; effective date**

Except as provided in subsection (b) of this section, the provisions of this subchapter and

subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

STATEMENT

Petitioner Ingersoll-Rand Company employed respondent Perry McClendon as a salesman and distributor of construction equipment. After nine years and eight months of service, McClendon was fired by the company, which cited general economic factors as the reason for the discharge. Pet. App. 1a-2a, 18a.

McClendon sued the company in state court. He first alleged that the discharge had deprived him of a sizable commission on a sale of equipment for which he had laid the groundwork. He also asserted that his pension would have vested in another four months and that a principal reason for the discharge was the company's desire to avoid making contributions to his pension fund. Ingersoll-Rand countered that allegation by presenting an affidavit stating that McClendon's pension benefits had, in fact, vested under the terms of the plan. Pet. App. 13a. McClendon apparently failed to understand that, pursuant to the break-in-service regulation, 29 C.F.R. 2530.200b-4, he had been credited with sufficient service to vest under the plan's ten-year requirement. However, McClendon continued to allege that the company had acted in bad faith when it discharged him, and did so in part in order to avoid making pension payments. Pet. App. 2a n.2. Based on these allegations, he alleged state common law causes of action sounding in tort and contract. McClendon sought both

compensatory damages (recovery for lost future wages and mental anguish) and punitive damages.

The state district court granted the company's motion for summary judgment (Pet. App. 25a-26a), and the state court of appeals affirmed (*id.* at 17a-24a). The court of appeals ruled that McClendon's employment was "at will" because the agreement governing his commissions, upon which McClendon had relied, expressly contemplated the possibility of termination at any time and there was no other indication of a good cause limitation on the company's right to terminate. *Id.* at 20a, 22a. The court further refused to recognize an implied covenant of good faith and fair dealing applicable to the employment relationship. *Id.* at 22a-24a. The court also upheld summary judgment against respondent's claim of intentional infliction of emotional distress, holding that the discharge was neither extreme nor outrageous. *Id.* at 24a.

A divided Texas Supreme Court reversed and remanded for trial. Pet. App. 1a-16a. The court applied "the principle that public policy can limit an employer's power to discharge at-will employees," and found that "the state has an interest in protecting employees' interests in pension plans." *Id.* at 4a, 5a. In reaching that conclusion, the court cited a state statute relating to the pension plans of public employees and relied on Section 510 of ERISA. The court noted that Section 510 "makes it unlawful for any person to discharge, fine, suspend or discriminate against any employee for the purpose of interfering with that employee's potential rights under a pension plan." Pet. App. 5a. The court added that "[t]he very passage of ERISA demonstrates the great significance attached to income security for

retirement purposes." *Ibid.* It therefore held that a plaintiff may bring a wrongful discharge action under Texas law alleging that "the principal reason for [the] termination was the employer's desire to avoid contributing to or paying benefits under the employee's pension fund." *Ibid.* Cases in which federal courts had found that ERISA preempts wrongful discharge claims were distinguished on the ground that McClendon "is *not* seeking lost *pension benefits* but is instead seeking future wages, mental anguish and punitive damages as a result of the wrongful discharge." *Id.* at 5a n.3.[1]

Four justices dissented. They all agreed that ERISA preempts the state cause of action that the court had recognized. Pet. App. 5a-9a, 13a. Justice Cook, joined by two other justices, explained that claims for violation of Section 510 of ERISA are enforceable under Section 502(a)(3), and that Section 502(e) confines litigation of such claims to federal courts. Pet. App. 7a. While it is "possible for state and federal law to address the same problem," Justice Cook continued, ERISA expressly provides in Section 514(a) that the federal statute preempts all state laws that "relate to" employee benefit plans. Pet. App. 7a. Moreover, he added, this Court had held in *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41 (1987), that ERISA's enforcement provision has a broad preemptive effect. Pet. App. 7a. Justice Cook concluded that ERISA provides employees such as McClendon "with a real and enforceable claim that they may bring in federal court and at the same time supersedes the claim manufactured today." *Id.* at 8a-9a.

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[1] Because of its reliance on Section 510, the court did not reach McClendon's claim that the company had breached a duty of good faith and fair dealing. Pet. App. 2a n.1.

SUMMARY OF ARGUMENT

As all of the federal courts of appeals to consider the matter have agreed, state wrongful discharge actions grounded on allegations that the employer sought to interfere with the attainment of rights under an employee benefit plan are preempted by ERISA. *Fitzgerald* v. *Codex Corp.*, 882 F.2d 586, 588 (1st Cir. 1989); *Pane* v. *RCA Corp.*, 868 F.2d 631, 639 (3d Cir. 1989); *Sorosky* v. *Burroughs Corp.*, 826 F.2d 794, 799-800 (9th Cir. 1987). This is so for two closely related reasons.

A. A claim alleging interference with the attainment of benefits "relate[s] to" an employee benefit plan within the meaning of ERISA's broad preemption provision, Section 514(a). This case illustrates how such claims "relate to" employee benefit plans, since the meaning of the terms of Ingersoll-Rand's plan are central to McClendon's claim and to the company's defense. If the case is tried, McClendon will contend that he was discharged in part because the persons responsible for that decision thought his pension was about to vest, while the company will stress that, under the terms of the plan, the pension had vested.

In addition, Section 510 of ERISA makes clear that, in Congress's view, actions alleging interference with the attainment of benefits "relate to" employee benefit plans. Indeed, the protections set out in Section 510—the provision prohibiting interference with the attainment of benefits—are plainly necessary to ensure that ERISA's other provisions are not evaded since, for example, "[n]o vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility." 119 Cong. Rec. 30,374 (1973) (statement of Sen. Hartke).

Furthermore, allowing state law claims analogous to ERISA actions enforcing Section 510 would interfere with Congress's purpose in enacting ERISA's broad preemption provision. As this Court has recognized, Congress preempted state law in Section 514(a) so that employee benefit plans would be governed by a single set of regulations. *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 11 (1987). If state law actions are also permitted, employers will be required to amend their practices to conform to the additional requirements the States might impose.

B. A state law claim analogous to a claim under Section 510 also is preempted because the enforcement provisions in Section 502(a) of ERISA have a particularly powerful preemptive effect. In enacting Section 502(a), Congress compared the provision to Section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. 185, and indicated that the courts were to develop federal common law to govern employee benefit plans. As this Court has recognized, "Congress was well aware [of] the powerful preemptive force of § 301. * * * The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, indeed, the entire comparison of ERISA's § 502(a) to § 301 of the LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws." *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41, 55-56 (1987). That conclusion is reinforced by the fact that, under Section 502(e) of ERISA, actions to enforce Section 510 may be brought only in federal court.

Allowing supplemental remedies would undermine the balanced remedial approach that Congress

adopted. When it enacted Section 502(a)(3), Congress decided to authorize make-whole relief for the victim of a violation of Section 510, but it was also concerned to avoid unduly burdening employers that choose to adopt employee benefit plans. The relief available under Section 502 to remedy violations of Section 510 is in fact ample. See, *e.g.*, *Folz* v. *Marriott Corp.*, 594 F. Supp. 1007 (W.D. Mo. 1984) (awarding back pay, front pay, restitution of benefits, and prejudgment interest). As the dissenters on the Texas Supreme Court stated, persons like McClendon should be limited to the avenue of relief that Congress has authorized. Pet. App. 8a-9a.

ARGUMENT

ERISA PREEMPTS STATE LAW CLAIMS ALLEGING THAT AN EMPLOYER DISCHARGED AN EMPLOYEE IN ORDER TO INTERFERE WITH THE ATTAINMENT OF EMPLOYEE BENEFITS

Congress enacted ERISA in 1974 after nearly a decade of studying the operation of private employee pension and welfare benefit plans. *Central States Pension Fund* v. *Central Transport, Inc.*, 472 U.S. 559, 569 & n.9 (1985); *Nachman Corp.* v. *PBGC*, 446 U.S. 359, 361 (1980). Congress found that there had been enormous growth in employee benefit plans in recent years and that "the continued well-being and security of millions of employees and their dependents are directly affected by these plans." 29 U.S.C. 1001(a). Congress established in ERISA a comprehensive regulatory framework to "assur[e] the equitable character of such plans and their financial soundness" (*ibid.*), and thereby to "protect * * * participants in employee benefit plans and their beneficiaries" (29 U.S.C. 1001(b)).

The ultimate goal of ERISA is to assure that employees and their beneficiaries actually receive the benefits they have been promised. See *Nachman Corp.*, 446 U.S. at 375. To that end, the Act imposes strict fiduciary duties on all persons who exercise discretion over the operation of any employee benefit plan. 29 U.S.C. 1101-1114. With respect to pension plans, Congress set minimum funding requirements (29 U.S.C. 1081-1086), established participation and vesting standards (29 U.S.C. 1051-1061), and created an insurance program to pay benefits promised by employers who become insolvent (29 U.S.C. 1301-1461).

Section 510 of ERISA is central to Congress's scheme. It provides that employers may not discharge or otherwise discriminate against an employee who is participating in an employee benefit plan "for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan." Section 510 is a necessary part of ERISA because without it, employers would be able to avoid the payment of benefits that they had promised to provide. S. Rep. No. 127, 93d Cong., 1st Sess. 35 (1973); H.R. Rep. No. 533, 93d Cong., 1st Sess. 17 (1973); 119 Cong. Rec. 30,374 (1973) (statement of Sen. Hartke). For example, in order to avoid its obligations, an unscrupulous employer might discharge an employee shortly before the right to retirement benefits was to vest or, where participation in a health plan required continued employment, might discharge an employee who had been diagnosed as suffering from a serious illness. Section 510 is enforced under Section 502(a)(3), one of the "six carefully integrated civil enforcement provisions found in § 502(a)." *Massachusetts Mutual Life Insurance Co.* v. *Russell*, 473 U.S. 134, 146 (1985).

The "crowning achievement" of the statute was its "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans." 120 Cong. Rec. 29,197 (1974) (statement of Rep. Dent). In Section 514(a), Congress expressly preempted "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." Congress broadly defined "State law" to include "all laws, decisions, rules, regulations, or other State action having the effect of law." Section 514(c). And, as this Court has repeatedly instructed, Section 514(a) is "deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'" *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. at 46 (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). "The pre-emption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985).

Not surprisingly, in light of these provisions, the federal courts of appeals that have addressed the issue have all found that ERISA preempts state wrongful discharge actions premised on employer interference with the attainment of rights under employee benefit plans. *Fitzgerald* v. *Codex Corp.*, 882 F.2d 586, 588 (1st Cir. 1989); *Pane* v. *RCA Corp.*, 868 F.2d 631, 639 (3d Cir. 1989); *Sorosky* v. *Burroughs Corp.*, 826 F.2d 794, 799-800 (9th Cir. 1987).[2] See also *Authier* v. *Ginsberg*, 757 F.2d 796

[2] In addition to the court below, one state court and two federal district courts have held to the contrary. See *K Mart Corp.* v. *Ponsock*, 732 P.2d 1364, 1365 (Nev. 1987); *Savodnik* v. *Korvettes, Inc.*, 488 F. Supp. 822, 826 (E.D.N.Y. 1980);

(6th Cir.), cert. denied, 474 U.S. 888 (1985) (preemption of action by fiduciary for unlawful termination); *Dependahl* v. *Falstaff Brewing Corp.*, 653 F.2d 1208, 1215-1216 (8th Cir.), cert. denied, 454 U.S. 968 and 1084 (1981) (preemption of state law tort claims based on alleged interference with benefit rights). Accord *Conaway* v. *Eastern Associated Coal Corp.*, 358 S.E.2d 423, 427 (W. Va. 1986).

A. A State Law Claim That An Employee Was Discharged So That Retirement Benefits Would Not Vest Is Preempted Because It "Relate[s] To" An Employee Benefit Plan Within The Meaning Of Section 514(a)

McClendon's claim that Ingersoll-Rand discharged him so that his pension would not vest states a cause of action under Section 510. Indeed, it is a classic example of the sort of claim that Congress intended to be brought under that provision. It is therefore clear that his allegation "relate[s] to" an employee benefit plan and is preempted under Section 514(a).

The heart of McClendon's claim is that Ingersoll-Rand terminated him because it thought that if he worked for the company for another four months, his retirement benefits would vest. Accordingly, the terms of the plan would play a key role in any trial of his state law claim. In the normal case, a plaintiff like McClendon would attempt to show that the plan called for an expenditure that the company avoided by discharging him. In this case, which is somewhat unusual since it is undisputed that McClendon's pension had in fact vested, the company would undoubtedly argue that there is no merit to McClendon's claim because, under the terms of the

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Hovey v. *Lutheran Medical Center*, 516 F. Supp. 554, 557-558 (E.D.N.Y. 1981).

plan, McClendon's benefits had vested prior to his discharge. McClendon, in turn, would most likely respond that the persons responsible for his discharge misunderstood the terms of the plan and discharged him because they thought his benefits were about to vest. In any event, the meaning of the terms of the plan would lie at the core of this case, as in any similar case, so that a state law action would have "a connection with or reference to" the plan. *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983).

In *Shaw*, the Court noted that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." 463 U.S. at 100 n.21. We would agree that a state wrongful discharge claim is not preempted under that standard if the plan is relevant only to the computation of damages. Thus, for example, if McClendon had prevailed on his state law claim that he was discharged in violation of the terms of his compensation agreement with Ingersoll-Rand, then it would have been appropriate for the court, as part of its remedy, to order his reinstatement in the pension plan or to award damages equivalent to the value of his pension benefits under the plan, and such an order would not be preempted. *Pizlo* v. *Bethlehem Steel Corp.*, 884 F.2d 116, 120-121 (4th Cir. 1989); *Totton* v. *New York Life Insurance Co.*, 685 F. Supp. 27, 31 (D. Conn. 1987); *Schlenz* v. *United Airlines, Inc.*, 678 F. Supp. 230, 234-236 (N.D. Cal. 1988); *Coontz* v. *Gordon Jewelry Corp.*, 439 N.W.2d 223, 226 (Iowa Ct. App. 1989). But more than the terms of a remedial order are at issue here. The essence of petitioner's claim that he was unlawfully discharged

necessarily involves the meaning of the terms of the plan.

The need for preemption is underscored by the existence of Section 510. Because it determined that Section 510 was essential to the accomplishment of its objective of ensuring the receipt of promised benefits, Congress included that provision in ERISA's "administration and enforcement" section. The provision was motivated by "evidence that in some plans a worker's pension rights or the expectations of those rights were interfered with." S. Rep. No. 127, 93d Cong., 1st Sess. 36 (1973). Congress therefore added Section 510 "to completely secure the rights and expectations brought into being" by ERISA. H.R. Rep. No. 533, 93d Cong., 1st Sess. 17 (1973). As Senator Hartke stated, "[n]o vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility." 119 Cong. Rec. 30,374 (1973). At the least, Congress thought that the right it was creating in Section 510 "relate[d] to" employee benefit plans.

A state law claim such as the one recognized by the Supreme Court of Texas is duplicative of the cause of action available under Section 510, and the availability of a duplicative state cause of action inevitably conflicts with the federal scheme. As this Court recently noted in *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 11 (1987), one effect of ERISA's broad preemption of state law is that it "afford[s] employers the advantages of a uniform set of administrative procedures governed by a single set of regulations." Congress recognized that "employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex ad-

ministrative activities," and that if "[f]aced with the difficulty or impossibility of structuring administrative practices according to a set of uniform guidelines, an employer may decide to reduce benefits or simply not to pay them at all." *Id.* at 11, 13; see also *Shaw*, 463 U.S. at 105 n.25. ERISA's broad preemption provision encourages the formation of private employee benefit plans "by eliminating the threat of conflicting and inconsistent State and local regulation." 120 Cong. Rec. 29,197 (1974) (remarks of Rep. Dent); see also *id.* at 29,933 (remarks of Sen. Williams).

It is not hard to see how state laws paralleling Section 510 could cause the problems Congress sought to avoid. For example, one State might adopt a presumption of discrimination against any employee who was discharged within a year before the vesting of his pension benefits, while another State might adopt a different period, or might decide that the presumption depended on the amount of the benefits that would vest. In that event, if state rules were not preempted, an employer faced with differing requirements would have to decide whether it nevertheless wished to adopt a benefit plan and, if it did, would have to adjust its employment practices in the various States in which it operated. But when Congress created certain rights and remedies relating to benefit plans in Sections 510 and 502(a) and provided for preemption of all state laws also relating to those plans, it clearly barred the application of laws that would make the operation of employee benefit plans more onerous. See *English* v. *General Electric Co.*, No. 89-152 (June 4, 1990), slip op. 6 & n.5.

Furthermore, it should be noted that "[t]he bill that became ERISA originally contained a limited

pre-emption clause, applicable only to state laws relating to the specific subjects covered by ERISA." *Shaw*, 463 U.S. at 98; see H.R. 2, 93d Cong., 1st Sess. § 699(a) (1973) (preempting state laws relating "to the subject matters regulated by this Act"). The Conference Committee broadened ERISA's preemptive scope. In doing so, it certainly did not intend to allow state causes of action analogous to those it authorized in Section 510. To the contrary, as the First Circuit stated in another case where the focus of the plaintiff's claim was interference with the attainment of benefits: "This is precisely the type of action that section 510 sought to cover and that is essential to the Act's protection. Thus, this action is 'necessarily federal in character by virtue of the clearly manifested intent of Congress.'" *Fitzgerald* v. *Codex Corp.*, 882 F.2d at 588, quoting *Metropolitan Life Insurance Co.* v. *Taylor*, 481 U.S. 58, 67 (1987).

B. A State Law Claim Analogous To A Claim To Enforce Section 510 Is Preempted Because The Remedial Provisions In Section 502(a) Are Exclusive

The fact that Section 510 is enforceable under Section 502(a)(3) provides a related, yet distinct, reason why preemption is mandated in this case. "'The six carefully integrated civil enforcement provisions'" contained in Section 502(a) "set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans." *Pilot Life*, 481 U.S. at 54, quoting *Massachusetts Mutual Life Insurance Co.* v. *Russell*, 473 U.S. at 146. Even in the absence of ERISA's express preemption provision, it would be

clear that actions such as McClendon's are preempted.

Section 502(a)(3) provides that any plan participant or beneficiary may bring a civil action to prevent or redress a violation of "any provision of this subchapter" (which includes Section 510) or of "the terms of the plan." Under Section 502(e), a cause of action under Section 502(a)(3) may be brought only in a federal district court, and Section 502(a)(3) states that injunctive relief is available in such actions and that a federal court may also grant "other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." This Court has recognized that Congress intended the federal courts to develop "a federal common law of rights and obligations" under Section 502(a). *Pilot Life*, 481 U.S. at 56.

The district courts that have found violations of Section 510 have properly awarded broad relief. For example, in *Folz* v. *Marriott Corp.*, 594 F. Supp. 1007 (W.D. Mo. 1984), the court concluded that the employer, which operated a self-funded medical benefits plan, had discharged the plaintiff after he contracted multiple sclerosis in order "to avoid the adverse economic impact which that disease could have under Marriott's employee benefit plans." *Id.* at 1013. It rejected the employer's contention that "relief under ERISA should be limited to reinstating the plaintiff as a benefit plan beneficiary, and that reinstatement to employment and back pay are not appropriate remedies." *Id.* at 1015. Rather, the court concluded that Congress intended to authorize relief that would make a plaintiff whole for the violation of Section 510. 594 F. Supp. at 1016. It ac-

cordingly awarded back pay, front pay, restitution of forfeited benefits, and prejudgment interest on the back pay award.

Similarly, in *Bittner* v. *Sadoff & Rudoy Industries*, 490 F. Supp. 534, 536 (E.D. Wis. 1980), the court held that it had "equitable power to put plaintiff back into the position he enjoyed before the discharge," and could award "back pay, reinstatement to his former position, restitution of his forfeited employee benefits, and any other relief necessary to make him whole." The court in *Vogel* v. *Independence Federal Savings Bank*, 692 F. Supp. 587, 596 (D. Md. 1988), while deciding that punitive damages may not be awarded in cases involving violations of Section 510, thought that other forms of extracontractual damages are available, including "recovery for mental distress or for money loss above and beyond the contractual terms." Thus, while the full extent of the relief available under Section 502 (a)(3) is unclear, especially with respect to extracontractual damages (see *Massachusetts Mutual Life Insurance Co.* v. *Russell*, 473 U.S. at 139 n.5), it is clear that generous remedies are available to plaintiffs who prove violations of Section 510.

Thus, there is no merit to the Texas Supreme Court's suggestion (Pet. App. 5a n.3) that the cause of action it created does not overlap or conflict with Congress's scheme because the state-law claim contemplated an award of damages from an employer, not benefits from a plan. The focus of Section 510 is on employers, and a make-whole remedy under that provision would almost always include an award of back pay from an employer. The remedy might also include an award of benefits or reinstatement in a benefit plan, but such an award is not required by

or essential to the congressional scheme, and (as here) may not be appropriate in a particular case.[3]

Because Congress has provided a remedy to enforce Section 510 and has further instructed the federal courts to develop a federal common law of rights and remedies under Section 502(a)(3), the decision in *Pilot Life* makes it clear that the federal remedy is exclusive. *Pilot Life* involved the question whether a state law action asserting improper processing of a benefit claim was preempted. The Court held that it was, and relied primarily on "the clear expression of congressional intent that ERISA's civil enforcement scheme be exclusive." 481 U.S. at 57. The Court based its conclusion on the "deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies." 481 U.S. at 54. The Court also noted that the Conference Report compared Section 502(a) with Section 301 of the Labor-Management Relations Act of 1947 and stated that "Congress was well aware [of] the powerful pre-emptive force of § 301." 481 U.S. at 55, citing H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 327 (1974). The Court explained that "[t]he expectations that a federal

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[3] Similarly, there is no merit to respondent's contention (Br. in Opp. 16) that the Texas Supreme Court's decision is consistent with cases such as *Scott* v. *Gulf Oil Corp.*, 754 F.2d 1499 (9th Cir. 1985). In that case, the plaintiffs asserted that their former employer had schemed with their current employer to eliminate their right to severance benefits. The court noted that "the heart of the matter" was that the current employer had no severance pay plan, so that to preempt the plaintiffs' state law claims "would leave them without an avenue of redress." *Id.* at 1506. In the absence of a cause of action under Section 502(a), the court allowed the claim to go forward. In this case, of course, McClendon has a cause of action under Section 502(a)(3).

common law of rights and obligations under ERISA-regulated plans would develop, indeed, the entire comparison of ERISA's § 502(a) to § 301 of the LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws." 481 U.S. at 56.

To the extent that the issue presented here differs from the issue in *Pilot Life*, the differences make this an even clearer case. Thus, *Pilot Life* involved a claim for benefits, and those claims may be brought in either state or federal court under Section 502(e). In cases such as this, however, Section 502(e) provides that *only* federal courts have jurisdiction. Moreover, it was argued in *Pilot Life* that the state law claim pertaining to bad faith processing of a benefit claim was a law regulating insurance, and therefore was expressly excepted from the preemption provision by Section 514(b)(2)(A), 29 U.S.C. 1144(b)(2)(A) (the insurance saving clause). No similar exception applies in this case.

State supplementation of the federal remedy threatens serious interference with the federal scheme. Congress has not specified every detail with respect to the remedies available under Section 502(a); instead it has instructed the federal courts to develop a federal common law of ERISA remedies and it has provided guidance to the federal courts from which they can fashion that common law. Put most simply, Congress, while enacting ERISA to ensure that employees would obtain the benefits they were promised, was also concerned that the requirements it imposed not be so burdensome that employers would be forced to reduce benefits or to eliminate them altogether. The federal courts must consider these dual objectives, which are in tension, in fashioning the remedies available under Section 502(a). The fifty States might not agree with the federal approach, or with each other. Indeed, the Texas Supreme Court appeared to be unaware that by creating a state wrongful discharge action that would permit an award of punitive damages, it had added significantly to the potential cost of operating employee benefit plans. In this respect, as in many others, allowing the States to add to the remedies available under ERISA would upset the balance to be achieved under federal law.

CONCLUSION

The judgment of the Texas Supreme Court should be reversed.

Respectfully submitted.

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